Supreme Court, U. S.
FILED
APR 30 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1592

KEITH B. DAVIS,

Appellant,

vs.

JAN L. DAVIS,

Respondent.

On Appeal from the Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

ARTHUR MACK
Larkin, Hoffman, Daly & Lindgren, Ltd.
1500 Northwestern Financial Center
7900 Xerxes Avenue South
Minneapolis, Minn. 55431
Attorneys for Respondent

KEITH B. DAVIS
210-4 Plymouth Court Office Center
12805 Highway 55
Plymouth Village, Minn. 55441
Pro se

1976—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

TABLE OF CONTENTS

page

A. Official and Unofficial Reports 1

B. Jurisdictional Grounds 1

C. Questions 5

D. Statement of Case 5

-General Facts re Pleadings and Court Proceedings 5

-Specific Issues 6

1. Care, Custody and Control of Children 6

2. Liability for other Spouse's Contractual Obligations 8

3. Is MS518.06 vague or contradictory .. 10

4. Calculated Denial of Due Process and Equal Protection 11

E. The Questions are Substantial 15

-Discrimination Without Reasonable Basis 16

-Life, Liberty and Property 17

-Public Policy - What Does our Country Stand for 18

-Certainty and Corruptness 20

-Importance of Sex Discrimination 21

F. Conclusion 21

Table of Constitutional
And Statutory Provisions

page

United States Constitution

Thirteenth Amendment 5, 9
Fourteenth Amendment 5,6,18
Fifth Amendment 6,8

Federal Statutes

28 U.S.C. Sec. 1257 (2) 2,22
28 U.S.C. Sec. 2103 22

Minnesota Constitution

Article 1, Section 7 6
Article 2, Section 2 9

Minnesota Statute

260.221 7,16
518.06 2,5,10,19,20,21
518.14 4,9

TABLE OF CASES

Page

Christianson v. Christianson, 217 Minn. 561, 563, 15 N.W. (2d) 24 16

Eisel v. Eisel, 261 Minn. 1, 110 N.W. (2d) 881 18

In Re Klugman, 97 N.W., 2d, 425, 256, Minn 113 ..... 7, 16

Newman v. Newman, 179 Minn., 184, 186, 228, N.W., 759, 760 18

Reed v. Reed, 404 U.S. 71 21

State Ex. rel. Peterson v. Sanders, 10 N.W., 2d, 387, 215 Minn. 502 ..... 7, 16

State v. Waslie, 277 Minn 446, 152, N.W. 2d 755 16

Weinberger v. Wiesenfeld, 367 F. Supp. 981, 420 U.S. 636 21

Wright v. Std. Oil Co., Inc. C.A. Miss., ... 9
470 2d 1280, Cert. denied, 93 S. Ct. 2772
2 M, 412 U.S. 938, 376 Ed. 2d, 398 reh.
den. 471 . 2d 650

Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 15

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1975

No. ....

Keith B. Davis,
Appellant,

vs.

Jan L. Davis,
Respondent

On Appeal From The Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

(A) Official and unofficial reports

1. Official Report - 235 NW 2d. 836;_____ Minn.____;

2. Unofficial Report - none

(B) Jurisdictional Grounds

1. Nature of proceeding and statute

(a) Dissolution of Marriage
(b) Minnesota Statute 518

2. Date of Judgment, time of entry, date of rehearing order, date notice of appeal filed, court in which filed

(a) Judgment Date - November 14, 1975
(b) Entry Time - 9:16

(c) Rehearing Order dated - December 19, 1975
(d) Notice of Appeal dated - January 30, 1976

3. Jurisdiction conferred by: 28 U.S.C. Sec. 1257 (2)

4. Cases believed to sustain the jurisdiction - not applicable

5. Text of statutes the validity of which are involved -

(a) MS518.06, Volume 31 of Minnesota Statutes containing Sections 517 to 524, Cumulative Annual Pocket Part for use in 1976, pages 10 and 11:

Grounds, Subdivision 1. A dissolution of a marriage may be granted by a court of competent jurisdiction upon a showing to the satisfaction of the court that there has been an irretrievable breakdown of the marriage relationship. Subd 2. A court may make a finding that there has been an irretrievable breakdown of the marriage relationship if the finding is supported by evidence of any of the following:

(1) A course of conduct detrimental to the marriage relationship of the party seeking the dissolution;

(2) Sentence to imprisonment in any state or United States prison or any state or United States reformatory subsequent to the marriage; and in such case a pardon shall not restore the conjugal rights;

(3) Habitual alcoholism or chemical dependency for a period of one year immediately prior to the commencement of the proceedings;

(4) Commitment pursuant to the provisions of chapter 253A for mental illness or previous commitment statutes, provided that: (a) Commitment itself be sufficient with or without institutionalization; (b) in granting a dissolution upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the guardian of the person and the guardian of the estate of such mentally ill person, if such guardian or guardians have been appointed and have qualified, and if such mentally ill person be confined, upon the superintendent of the institution in which such mentally ill person is confined; (c) such guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues; (d) the rights of the parties as to the support and maintenance of the mentally ill person shall not be altered in any way by the granting of the dissolution; (e) the person be under commitment for mental illness at the time of the commencement of the action; and (f) a guardian ad litem shall be appointed for such mentally ill person;

(5) Continuous separation under an order of decree of separate maintenance for a period of one year

immediately preceding the commencement of the proceeding;

(6) Serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage.

(b) MS518.14, Volume 31 of Minnesota Statutes containing Sections 517 to 524, Cumulative Annual Pocket Part for use in 1976, page 15:

Temporary alimony or support money; costs and disbursements and attorney's fees. In any proceeding brought either for dissolution or separate maintenance, the court, in its discretion, may require one party to pay a reasonable amount, necessary to enable the other spouse to carry on, or to contest the proceeding, and to support such spouse and the children during its pendency. The court may adjudge costs and disbursements against either party. The court may authorize the collection of any money so awarded by execution, or out of any property sequestered, or in any other manner within the power of the court. An award of attorney's fees made by the court during the pendency of the proceeding or in the final judgment survives the proceeding and if not paid by the party directed to pay the same may be enforced as above provided or by a separate civil action brought by the attorney in his own name. If the proceeding is dismissed or abandoned prior to determination and award of attorney's fees the court may nevertheless award attorney's fees upon the attorney's motion and such award shall

also survive the proceeding and may be enforced in the same manner as last above provided.

(C) Questions

1. Under the due process and equal protection clauses of the Fourteenth Amendment, can a fit male parent, pursuant to the Minnesota no-fault dissolution statute, be deprived of the care, custody, and control of his children?

2. Does forcing a spouse to pay for the other spouse's legal fees in a no-fault marriage dissolution constitute slavery or involuntary servitude as prohibited by the Thirteenth Amendment?

3. Is Minnesota Statute 518.06 invalid under the Fourteenth Amendment as either or both vague or contradictory, again either or both, on its face or as applied?

4. Was the trial and appeal conducted and acted upon in a fashion designed, intended and calculated to deny appellant due process and equal protection of the laws as contemplated by the Fourteenth Amendment?

(D) Statement of Case

General Facts re
Pleadings and Court Proceedings

Pursuant to a summons and complaint for divorce and a motion for temporary relief, respondent was granted temporary custody and care of the three minor children of appellant and respondent and of temporary possession of

the homestead. Appellant was granted rights of visitation.

Respondent subsequently by motion alleged a need for reduction of visitation in order that she might have more time with the children, and was granted a reduction in visitation. Appellant opposed the motion and appealed the order so reducing the visitation on grounds including that the reduction "was in violation of the due process of the law requirements as contemplated by, both, the Fifth Amendment to the United States Constitution and Article 1, Section 7, of the Minnesota Constitution, and on the further ground that the reduction "was a denial to defendant - appellant of equal protection of the laws as contemplated by Amendment 14, Section 1, of the United States Constitution." Respondent sought dismissal of the appeal on the ground that the appeal was "from a non-appealable order". The appeal was dismissed.

Appellant moved the court for a jury trial, the motion was denied and the case in chief was tried directly to the Court. The Court granted respondent a dissolution of the bonds of matrimony, awarded her custody of the children and possession of the home.

Appellant duly appealed to the Supreme Court of Minnesota. The Supreme Court affirmed the trial court.

Specific Issues

1. Care, Custody and Control of Children

(a) Facts - The Trial Court specifically found that appellant was a fit parent. Minnesota case law holds that in a dispute with a third person, in

order to deprive a parent of custody of its child, there must be weighty reasons, State ex. rel. Peterson v. Sanders, 10 N.W., 2d 387, 215 Minn. 502, or grave reasons growing out of neglect, abandonment, incapacity, moral delinquency, instability of character, or inability to furnish the child with needed care. In re Klugman, 97 N.W. 2d 425, 256, Minn. 113. Minnesota Statute 260.221 provides for termination of parental rights upon a showing of grounds couched in language closely paralleling the reasons set forth above.

The Trial Court finding that appellant was a fit parent was based upon the testimony of sixteen witnesses called by appellant, including the sole expert witness, Jack Wallings, M.D., who testified based on hypothetical psychological profiles of the two parents, that appellant "would be the preferable parent" (T, p 193, ll 1-3). The case was tried under the Minnesota no-fault statute which was adopted into law as CHAPTER 107, 1974 Sessions Laws, "No-Fault Divorce".

(b) Federal Questions raised and passed upon by Court - On March 20, 1974 appellant filed an Answer in Opposition to the Motion to Dismiss the Appeal from the order reducing visitation referred to above. Minnesota Supreme Court Case No. 44991. In the Answer appellant asserted that a reduction of visitation constituted a denial of custody, and that such denial of custody was:

> "in violation of the due process of the law requirements of the law as contemplated by, . . . the Fifth Amendment to the United States Constitution"; and, "a denial to defendant - appellant of equal protection of the laws as contemplated by Amendment 14, Section 1, of the United States Constitution."

The issue was again raised in appellant's brief on the appeal from the trial courts judgment on the case in chief. In the brief, the issue was stated: "Can a fit parent, free of fault, be stripped of and denied the custody, companionship and privilege of bringing up its children, absent a showing of a substantial, weighty, and grave reason growing out of neglect, abandonment, incapacity, moral delinquency, instability of character, or inability to furnish the child with needed care?" (brief p 1). Appellant argued to the court that "To accord a married parent custody subject only to the above conditions, but to deny such custody to a fit, divorced , parent pursuant to a no-fault divorce statute, is a denial of equal protection of the laws."

The Minnesota Supreme Court affirmed the trial court award of custody and commented that it "strongly disagrees" that denial to a fit parent is a denial of equal protection of the laws (first full paragraph of page 2 of the Supreme Court's opinion filed November 14, 1975).

2. Liability for other spouse's contractual obligations

(a) Facts - the trial court awarded respondent attorney's fees in an amount of $2,060.00 (two thousand and sixty dollars) and the Minnesota Supreme Court awarded respondent $350.00 (three hundred fifty dollars) for a total award of attorney's fees of $2,410.00 (two thousand four hundred ten dollars).

(b) Federal Questions Raised and Passed Upon by Court - Appellant argued in the appeal brief that a husband is not bound by the contracts of his wife. Wright v Std. Oil Co., Inc., C.A. Miss. 470 F2d 1280, cert denied, 93 S Ct. 2M, 412 U.S. 938, 37 L. Ed. 2d 398 reh. den. 471 F. 2d 650 (brief p 13). The reply brief states "To the extent MS 518.14 operates to make "appellant liable for the contract of "respondent," "the statute is unconstitutional. Article 2, Section 2 of the Constitution of the State of Minnesota, adopted October 13, 1857, provides, in part, as follows:

> "There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted."

The Thirteenth Amendment to the United States Constitution contains a similar prohibition against slavery and involuntary servitude.

The Minnesota Supreme Court affirmed the trial court award of Attorney's fees and characterized the issue as a "Novel assertion", "not supported by any citation of authority," and, "Indeed, we doubt whether any could be found."

3. Is MS518.06 vague or contradictory

(a) Present MS518.06 was enacted as "Chapter 107, 1974 Session Laws, No-Fault Divorce". The trial court stated with reference to the matter of an irretrievable breakdown, that "under the new law . . . it is not a question of who is at fault ... It is not a question of fault ..." (T 493). In an about face, the Minnesota Supreme Court characterized the trial as detailing "conduct of appellant causing the breakup" (opin., p 1, 4th full paragraph), and that the "evidence presented at the trial amply showed a course of conduct detrimental to the marriage relationship". With regard to this latter statement by the Court, it necessarily refers to appellant's course of conduct. Appellant did not introduce evidence at the trial as to provocation by or guilt of respondent because of an understanding that the proceeding did not involve the question of fault (T, p 492 ll9-25, p 493, ll 1-5, p 495, ll 20-25; all of p 496; p 497; ll 1-4; and, Reply brief, p 2, 2nd full paragraph).

Pursuant to MS 518.06 a marriage may be granted for an "irretrievable" breakdown. The statute further provides that the court may find there has been an irretrievable breakdown if there is evidence of "a course of conduct detrimental to the marriage relationship".

(b) Federal Questions raised and Passed Upon - Page two, the third paragraph

of the Reply Brief reads:"The aforesaid paragraph 1 is inconsistent with and contradictory of the entire intent and purpose of the No-Fault Statute. To give force and effect to paragraph 1 renders the entire statute of which it is a part ambiguous. As such the paragraph is invalid. Alternatively, the entire statute is unconstitutionally vague". (The paragraph 1 referred to is the above quoted "course of conduct" provision.)

The Court made no ruling whatsoever with regard to this contention. The issue is in a sense inherently only raised upon this appeal. The trial court did not find evidence of a course of conduct detrimental to the marital relationship. The Supreme Court of its own volition supplied that finding. Accordingly, appellant was not aggrieved by the statute, though contradictory on its face, until the Supreme Court rendered its opinion.

4. Calculated Denial of Due Process and Equal Protection

(a) Facts - Appellant argued to the court that the custody report was false (T, p8, l 24), and that the custody study included hearsay (T, p8, ll 5-21). Appellant cited the two matters on page 14 of the brief, yet the court said "no attempts were made to secure judicial relief from the trial court" (opin. p 3, 1st full paragraph). The trial court awarded attorney fees to the female plaintiff in an action brought to cite appellant for contempt (brief A-29, para. 3 of Order); the

trial court denied male appellant's motion for attorney's fees. Appellant's motion appears in the brief at A-33, paragraph 3. The Court order on the motion appears in the brief at A-36 and A-37. In addition, the following instances of discrimination occurred:

i) issuance of a visitation schedule which would permit Mrs. Davis to unilaterally and at her unfettered discretion deprive Mr. Davis of about 29 hours of visitation in exchange for only 3 hours (June 14 hearing, page 48, lines 18 through 25 and page 49, lines 1 through 17, Add. 5 & 6);

ii) denial to appellant of prompt access to the courts;

1. motion filed May 25, 1973; heard June 14, 1973 (A. 31-35); delay of 20 days (similar motion of female plaintiff brought on for hearing with only an 8 day delay, A. 26-28);

2. motion served November 30, 1973 (A. 40-42); heard December 14, 1974, delay of fourteen days;

3. review requested January 3, 1974; heard January 30, 1974; delay of 27 days;

4. motion dated February 6, 1974; heard March 6, 1974; delay of 28 days;

5. hearing on objections dated April 15, 1974; heard

April 23, 1974; delay of eight days;

6. motion dated May 23, 1974 (A 51 & 52), heard June 21, 1974; delay of 29 days;

7. transcripts ordered October 18, 1973, not fully delivered until February 20, 1974 (see affidav. in support of Defendant's July 5 Motion, para. 5, Add. 13 & 14);

iii) refusing to adequately extend the time for discovery (see affidavit of Keith B. Davis in support of Defendant's motion dated July 5, 1974 and paragraphs 7 and 15 through 18 thereof in particular, Add. 14-17). This is especially true in the light of evidence that the reason discovery hadn't been completed was the Court's own delay in timely providing a transcript (same affidavit, para. 1 through 3, Add.13) and in the failure of appellee to properly answer interrogatories. Supplemental Answers to Interrogatories were received as late as about July 1, 1974, the sufficiency of which of course could not be determined until after their receipt (see letter of transmittal for supplemental answers to interrogatories dated June 28, 1974, Add. 25);

iv) refusing to require appellee to outline thetestimony of the witnesses reportedly being called in appellee's behalf (question 15 of interrogatories dated March 29, 1974, Add. 25);

v) setting the case for trial for alleged reasons when in fact there was no evidence of said alleged reasons (see para. 3, sub-para B) of the Notice of Motion dated July 5, 1974, A. 60);

vi) setting the case for trial in the absence of a certificate of preparedness of either counsel (para. 3, sub-para. A of Motion dated July 5, 1974, A. 60);

vii) permitting a hearing to proceed on a motion in absence of appellee, Mrs. Davis (hearing on March 16, 1974, page 18, lines 12 and 13, Add. 1 & 2);

viii) the admission of evidence not previously disclosed to appellant during discovery (trial transcript, page 247, lines 2 and 3 and the answer bridging pages 266 and 267 of the trial transcript); and

ix) failing to advise appellant of the manner, conditions, and scope (Rule 35.01, RULES OF CIVIL PROCEDURE, Add. 26) of the examination which appellant was ordered to submit to by an oral order issued in open court on March 6, 1974 (March 6 hearing, page 21, lines 21 through 25 and page 22 and 23, lines 1 through 11, Add. 26 & 27) and confirmed by the written order dated March 7, 1974 (A. 48 & 49).

Finally, the Supreme Court itself characterized the trial court record as showing a

a course of conduct detrimental to the marital relationship (opin. p3), in the face of the fact that the issue of fault hadn't been litigated (T, p 492, ll 9-25, p 493, ll 1-5, p 495, ll 20-25; all of p 496; p 497, ll 1-4; and, Reply brief, p 2, 2nd para.).

(b) Federal Question Raised and Passed Upon - Issue IV "Procedural Errors", raises the question of whether appellant was one of a class to whom justice was applied "with an uneven hand"; or, was singled out and "deprived of his constitutional rights"... "in a manner not unlike in character the incidents found objectionable by the United States Supreme Court in Yick Wo v. Hopkins, 118 U.S. 356, 6 S Ct. 1064, 30 L. Ed. 220" (brief, p 14). The issue is stated simply as "was appellant denied either or both equal protection or due process of the law?" (brief, p 2).

The Supreme Court refused to review the issue because "no attempts were made by appellant to secure judicial relief from the trial court for any of the alleged errors. Consequently, we will not consider them: (opin. p 3). By contrast with all the other dispositions of issues by the Court, for this issue the Court cited no authority whatsoever.

(E) The Questions are Substantial

Discrimination Without Reasonable Basis

In a dispute between parents, no reasonable basis, particularly pursuant to a no-fault divorce statute, and even more particularly where the male is a fit parent, exists for discriminating against the male parent. In all other cases, in disputes between a parent and a third person or agency, a parent is only denied custody of its child if there are weighty reasons, State ex. rel. Peterson v. Sanders, supra, or grave reasons growing out of neglect, abandonment, incapacity, moral delinquency, instability of character, or inability to furnish the child with needed care, In re Klugman, supra. Minnesota Statute 260.221 sets forth very similar grounds for termination of rights of a parent to a child, namely; abandonment; substantial continuous and repeated refusal of care and protection; ability but neglect to provide physical or mental health care or moral guidance; and unfitness of parent by reason of debauchery, intoxication or habitual use of narcotic drugs or repeated lewd and lascivious behavior. In a dispute between parents, a mother is awarded custody of minor children unless it is affirmatively shown that the award would be detrimental to the welfare of the child, Christianson v. Christianson, 217 Minn. 561, 563, 15 N. W. (2d), 24. An entirely different standard exists in a dispute between a parent, male or female, and a third party. The extent of the disparity of the standards is amply illustrated by State v. Waslie, 277 Minn. 446, 152 N.W. 2d, 755. In Waslie, the child had been in the custody of its grandparents from seven days after birth continuously for almost fifteen full years. In spite of testimony by the child that he wanted to remain with his grandmother, the Court disregarded the child's preference and awarded custody to the natural parents, saying: "Where the family life holds a fair promise of favorable care and treatment

of the child, the natural parents should be given an opportunity to fulfill their desire and obligation to rear and guide the child".

No reasonable basis exists for discrimination against a male parent. Assuming arguendo, and arguendo only, that a Mother might ordinarily be a somewhat better parent, as between two fit parents, it makes no more sense to award custody on the basis of sex than it would to scientifically test all parents of a community and give the children of the community to the parents scoring the highest on the test.

Life, Liberty and Property

Rights are property. Life is more than a heartbeat or a brainwave on an electronic monitoring apparatus. Liberty is more than freedom from incarceration. A male subjected to a no-fault divorce is deprived of life, liberty and property. A male defendant in an action involving minor children has no recourse once he is served papers in the action. In the case of Eisel v. Eisel, 261 Minn. 1, 110 N.W. (2d) 881, custody was reversed, a child was taken from a father who'd had the custody of the child for four years, and permanent custody awarded to the mother because there was "no evidence to support a finding that the welfare of the child required his being in the custody of his father rather than his mother". A no-fault divorce statute is in effect a walk-out divorce statute. Where minor children are involved, a female literally cannot only walk out on a marriage, but can walk off with all the incidents of the marriage as well. All, based on an old wives' tale fraught with conclusions based on assumptions, to wit that a female is more fit than a male to care for minor children. Aside from immunities derived from a mother's natural milk, which admittedly

a father cannot himself provide, it is respectfully submitted that it is a myth that a female is biologically superior to a male as a caretaking person of children of tender years. Old ideas die hard. Myths are self-perpetuating. The Minnesota Court has stated that the rule that custody of very young children is to be awarded the mother has its inception "From the very beginning of the administration of justice by theCourts of our country" Newman v. Newman, 179 Minn. 184, 186, 228 N.W., 759, 760. In other words, the premise has never been questioned, has never seen the light of day. It is bad enough to suffer indignity, outrage and injustice inherently felt and implicit in such a mindless disregard for principal, logic and reason, but such ignominies are merely the tip of the iceberg. Under current law, a male parent of children of tender years is subject to absolute tyranny. Tyranny is tyranny be it malicious or benign.

In reality, an atmosphere pervades the divorce courts that not only denies a male defendant any semblance of justice, but is demeaning, dehumanizing, discriminating and indeed vilifying. The role and function of the divorce court in our judicial system is that of the star chamber. Surely the Fourteenth Amendment mandate of life, liberty and property for all, according to due process and equal protection of thelaw requires more.

Public Policy - What Does our Country Stand For?

Present society has produced the Watergate scandal, numerous reports by public officials of bugging of their offices and homes, and other similar evidence of a breakdown of morals and the structure of our society. If ever stability was needed in our society, it is now.

What right is left in our society that is sacred? Should not a person, even a male, have an absolute, inviolate RIGHT to his children, his home, absent some act or failure to act on his part constituting a forefeiture of that right? Would not we have a more enlightened society if a person could rest secure in the knowledge that if nothing else a person had a right to home and family in this country? A "home" is more than a lot and a building called a house. A home embodies intangibles which, at least in lip service, our society values highly. Supposedly, our society also places great value on the family. What are the true values of our society? Does it place any value on the home? Does it place any value on the family unit? Clearly not if MS518.06 is allowed to stand as a Constitutionally valid, legislative expression of this society's value system, and likewise clearly not if present practices in the application of other statutes, though inoffensive on their face, are permitted to continue. No-Fault MS 518-06 is an extension of an already reprehensible practice, namely depriving a male parent of his children and home because of his sex. We are not talking about instances in which by non-conformance with statutory standards of conduct a man has forfeited his marital rights. We are talking about what happens to a male parent pursuant to a no-fault dissolution proceeding. It is one thing for a male to say, I am uncomfortable in the conventional parenting role for young children, it would be difficult and indeed perhaps even painful and humiliating for me to learn the role, I don't want the role, I voluntarily relinquish my rights to my children and home in consideration for not having to be saddled with the role. It's quite another to tell a male he has no choice in the matter, and that's precisely what MS518.06 and the prevailing practice under numerous other statutes, does.

No-Fault MS518.06 is also destructive of the family unit. THE ONLY WAY A MALE STANDS A CHANCE OF RETAINING HIS CHILDREN AND HOME IS TO ATTACK AND DESTROY HIS ADVERSARY. For example, if a male shows that his spouse is an unfit parent, he stands a good chance of being awarded his children, or, as a further illustration, if he shows that the female was at fault, he at least will likely receive a more favorable property settlement. In both cases, such a showing necessarily opens emotional wounds, wounds which perhaps can't ever be healed and which not only are destructive of the marital relationship but almost certainly have harmful side effects on any children of the marriage. As a matter of policy, which is better, giving all free of fault spouses, regardless of sex an absolute right to their family and home, or requiring a spouse to attack and certainly destroy the marital relationship, and family, if he is to even have a hope of RETAINING his children and home when he's done nothing to forfeit them?

Certainty and Corruptness

An, if not, the object of law is to provide the citizenry of a country with as unequivocal a standard as possible, a stable reference, by which they can stear the course of their lives with certainty. What sort of standard or reference doesMS518.06 provide? A nose of wax. First it is twisted one direction in the trial court and we are led to believe that fault is not at issue. But lo and behold, upon arrival in the State Supreme Court we find the nose twisted the other direction and not only is fault at issue, but it's been proven, a neat trick considering the issue wasn't even litigated. Compounding the matter is that the statute hinges upon an "IRRETRIEVABLE" breakdown. Do we have any idea when a breakdown is irretrievable? For sure

when one of the parties, such as the respondent in this case, blocks and frustrates any attempt at retrieval. In other words, when a party wants to walk out on the marriage. If the legislature meant walkout divorce they should have said walkout divorce. But if they'd been that forthright and certain about it, then the jig would have been up and a non-forfeiting party protected against unlawful and indeed criminal deprivation of his home and family. In their greed, to protect the established benefactors ofthe graft from a system which is designed, intended, and calculated to extort for pucuniary gain and to control through fear of extortion those who would dare to speak out against the establishment, and really, to whitewash and lend legitimacy to existing practices of the divorce grist mill, legislation was enacted which was intentionally vague and contradictory. Striking down such uncertain legislation will not only precipitate the needed certainty in the law but strike a blow for integrity in the legal system as well by condemning the existing offensive practices of which MS518.06 is symbolic.

Importance of Sex Discrimination

The decisions in such cases as Reed v. Reed 404 U.S. 71, and Weinberger v. Wiesenfeld, 367 F Supp. 981, 420 U.S. 636, serve to emphasize the growing importance of sex discrimination, which alone and in and of itself in the instant case gives the substantiality necessary to the noting of probable jurisdiction.

(F) Conclusion

For the foregoing reasons, probable jurisdiction should here be noted. Should this court conclude that this is not properly an

appeal under 28 U.S.C. Sec. 1257 (2) appellant requests that this jurisdictional statement be treated as a petition for certionari pursuant to 28 U.S Sec. 2103, and that certionari thereupon be granted.

Respectfully submitted,

Keith B. Davis

210-4 Plymouth Court
Office Center
12805 Highway 55
Plymouth Village, Minnesota 55441

Lawyer Pro Se for Appellant

- -

Arthur Mack
LARKIN, HOFFMAN, DALY & LINDGREN, Ltd.
1500 Northwestern Financial Center
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431

Counselor for Respondent

APPENDIX

Page

--OPINION A-1

--ORDER FOR REHEARING A-6

--NOTICE OF APPEAL A-7

No. 224 Hennepin County Per Curiam

Jan L. Davis,

Respondent,

45524 vs.

Keith B. Davis,

Appellant.

Endorsed
Filed November 14, 1975
John McCarthy, Clerk
Minnesota Supreme Court

Heard before Sheran, C. J., and Otis, and Kelly, JJ., and considered and decided by the court en banc.

O P I N I O N

PER CURIAM.

Appeal from a judgment of the Hennepin County District Court granting petitioner a dissolution of marriage and awarding her custody of the parties' three minor children, plus attorneys fees. We affirm.

Petitioner, Jan Davis, and appellant-respondent, Keith Davis, were married in July 1966. Three children were born of this marriage. Their ages at the time of the decree were 7, 6, and 4. Petitioner is a commercial artist and appellant is

an attorney engaged in the private practice of law.

No useful purpose would be served by detailing to any extent the emotional and psychological conflicts that led to the eventual breakup of this marriage. Suffice it to say that several serious attempts at salvaging the marriage through marital counseling proved unsuccessful.

Based upon a thorough custody study by the Hennepin County Department of Court Services and a lengthy trial which detailed the conduct of appellant causing the breakup, petitioner's fitness to remain the custodial parent, and each party's financial resources, the court made its findings of fact, conclusions of law, and order for judgment and decree. The judgment and decree (1) granted petitioner a dissolution of her marriage to appellant; (2) granted petitioner the permanent custody of the minor children along with monthly child support, but allowed appellant reasonable visitation rights; (3) granted petitioner all right and title to much of the real and personal property of the parties, subject to appellant's

lien upon the homestead; (4) awarded petitioner $2,060 for attorney's fees and court costs. Appellant, who failed to move for a new trial or amended findings of fact and conclusions of law, appeals from the judgment and decree.

On the main question of child custody, the trial court found: "That Petitioner and Respondent are both fit and proper persons to have the sole care, custody and control of the minor children of the parties." However, that court also found that the best interests of the children were such that petitioner should have the sole care, custody, and control of the minor children. It is axiomatic that our "controlling" consideration in this matter must be the welfare of the children. Hoffman v. Hoffman, ____ Minn. ____, 227 N. W. 2d 387 (1975); LaBelle v. LaBelle, 296 Minn. 173, 207 N. W. 2d 291 (1973). Appellant argues that, given the intent and policy of the no-fault divorce provisions, tc deny him custody where he has been found a fit parent consistutes a denial of equal protection of

the laws. We strongly disagree with this contention because a "fair" hearing was accorded both the husband and the wife, along with the custody study which outlined the relative factors for and against custody for both parties. The trial court was vested with broad discretion in applying the best-interest standard in the custody determination and, without a showing of arbitrary action, an appellate court will be slow to interfere with the exercise of that discretion. Hansen v. Hansen, 284 Minn. 169 N. W. 2d 12 (1969). Also, this court has held that minor children may be entrusted to one parent's custody even if no specific finding of the other's unfitness was made, Lindberg v. Lindberg, 282 Minn. 536, 163 N. W. 2d 870 (1969); or even if both parents are found equally fit to have custody. Ryg v. Kerkow, 296 Minn. 265, 207 N. W. 2d 701 (1973).

In this case there is clearly sufficient evidence to support the court's findings. We hold there was no abuse of discretion in granting child custody to petitioner.

Appellant next challenges the award of attorneys

fees not on the grounds that it is an abuse of the trial court's discretion, but on the grounds that it is an unconstitutional means of forcing him to pay for the contracts of his wife. Such a novel assertion is not supported by any citation of authority. Indeed, we doubt whether any could be found. The award of attorneys fees in a dissolution action, as provided by Minn. St. 518.14, will not be disturbed by this court absent a clear abuse of discretion. Borchert v. Borchert, 297 Minn. 16, 21, 154 N. W. 2d 902, 906 (1967); 6A Dunnell, Dig. (3 ed.) Sec. 2804. No such abuse having been alleged or shown by appellant, the trial court's award must be affirmed.

Appellant's claim that certain "procedural" errors occurring prior to and during trial show a bias on the part of the trial court against male respondents in dissolution cases is without merit. No attempts were made by appellant to secure judicial relief from the trial court for any of these alleged errors; consequently, we will not consider them.

Since the evidence presented at the trial amply

showed a course of conduct detrimental to the marital relationship of the parties, we find that the finding by the trial court that the marriage had broken down was not clearly erroneous. Nelson v. Nelson, 291 Minn. 496, 189 N. W. 2d 413 (1971); Rule 52.01, Rules of Civil Procedure. The finding that the marriage was irretrievably broken is also supported by the evidence that several counseling attempts failed to aid the parties in a reconciliation.

We hold that the judgement of dissolution is supported by the findings of fact and therefore affirm. Attorneys fees of $350 are allowed to resondent for this appeal.

Affirmed.

(petition Denied) State of Minnesota

Office of Clerk of Supreme Court

St. Paul, Minnesota

Jan L. Davis December 19, 1975

Respondent,

vs. 45524

Keith B. Davis

Appellant

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,

JOHN McCARTHY

Clerk Supreme Court

FN307

No. 45524

STATE OF MINNESOTA

IN SUPREME COURT

Jan L. Davis	)	NOTICE
	)	
Petitioner-Appellee	)	OF
	)	
vs.	)	APPEAL
	)	
Keith B. Davis	)	
	)	
Respondent-Appellant	)	

Notice is hereby given that Keith B. Davis, the Respondent-Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgement of this Court affirming the judgement dissolving the marriage of the parties hereto, awarding custody of the minor parties hereto to Appellee, awarding the homestead of the parties to Appellee, and awarding attorney's fees to the Appellee entered in this action on November 14, 1975, and a Petition for Reargument of which was denied by an Order of this Court entered December 19, 1975.

This appeal is taken pursuant to 28 U.S.C.A. Sec. 1257(2).

Dated: January 29, 1976

[Signed] Keith B. Davis
Keith B. Davis, pro se, and Attorney for Respondent-Appellant
Address-210-4 Plymouth Court Office Center
12805 Highway 55
Plymouth Village, Minnesota 55441

SUPREME COURT

FILED

JAN 30 1976

JOHN McCARTHY
Clerk